STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF MACOMB,

Appellant,

v

STATE TAX COMMISSION,

Appellee.

UNPUBLISHED
June 24, 2003

No. 234962
Tax Commission

Before: Cooper, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Macomb County appeals by leave granted from the State Tax Commission's final determination of state equalized value (SEV) for commercial property in Macomb County. We affirm.

The General Property Tax Act, MCL 211.1 *et seq*, governs the yearly assessment and equalization of property for ad valorem tax purposes. "The principal successive steps in the process include assessment of individual parcels by the local assessor at fifty percent of true cash value, intra-county equalization by each county's board of commissioners, and intercounty (state) equalization by the [State Tax Commission]." *Richland Twp v State Tax Comm*, 210 Mich App 328, 332; 533 NW2d 369 (1995).

In the instant case, Macomb County timely submitted its equalization study for 2001 to the Commission. The study utilized the appraisal method and showed a 4.3 percent increase in the value of Macomb County's commercial property over the 2000 SEV. On January 22, 2001, the Commission tentatively approved the methods used by the County in conducting its appraisal study. However, shortly thereafter the Commission notified the County that it had reservations regarding the accuracy of the study. The Commission specifically questioned the County's failure to use updated assessed land values and economic condition factors (ECFs).

The Commission staff performed a preliminary sales-ratio study for comparison purposes. This study was updated as more commercial sales were discovered and evaluated according to their suitability for inclusion in the study. During this process, the County met with the Commission and suggested the exclusion or inclusion of certain properties. The most noteworthy property that the County wanted included in the study was the Universal Mall located in the city of Warren. While the Commission initially excluded the Universal Mall, it

later decided to stratify[1] the sale and included it within the study. On May 29, 2001, the Commission finalized the SEV for commercial property in Macomb County at $3,300,359,060, adding $377,277,003 to Macomb County's commercial property equalized value. The County objected and appealed to this Court.

Macomb County raises several arguments regarding the Commission's actions in this case. However, absent fraud, this Court's review of a decision by the Tax Commission is limited to a determination of whether it made an error of law or adopted an improper legal principle. Const 1963, art 6, § 28; *Meijer Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). "The [Commission's] factual findings are upheld unless they are not supported by competent, material, and substantial evidence, while the [Commission's] failure to base its decision on such evidence is an error of law requiring reversal." *Tuinier v Bedford Charter Twp*, 235 Mich App 663, 667; 599 NW2d 116 (1999). .

Macomb County initially argues that the Commission erred as a matter of law by using a biased sales-ratio study that excluded the sale of over-assessed properties. However, the only sale specifically addressed by Macomb County on appeal is the sale of the Universal Mall. We note that there is legal authority supporting Macomb County's position that property may not be excluded from a sales-ratio study simply because it is atypical. See *Jackson Co Bd of Comm'rs v State Tax Comm*, 130 Mich App 290, 298-299; 343 NW2d 255 (1983). Nevertheless, a review of the record reveals that the Commission actually included the sale of the Universal Mall in its study. Therefore, the issue becomes whether the Commission erred in stratifying the sale.

The Universal Mall property was sold in 1999 for $14,407,304. However, the property was assessed at $14,884,329, making its approximate cash value at the time it was appraised over $29 million. Given the fact that its assessment-to-sale price ratio at the time of the sale was 103 percent, rather than the mandated fifty percent, it is clear that the Universal Mall was over-assessed.[2] *Richland Twp, supra* at 332. The Commission initially labeled the sale a "distress sale" and excluded it from the study. However, the Commission subsequently admitted that the sale was a good indicator of its true cash value. Nevertheless, the Commission decided to stratify the sale because it was not generally representative of other commercial properties within the County. According to the Commission, stratification reduced the impact the mall's over-assessment would have had on the SEV.

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[1] The Commission defined stratification as "a process by which the true cash value of a classification of property is projected from a sales study by determining separate ratios within a classification for a group of sales or an individual sale, and then applying the respective ratios to the stratified classification assessments for the respective groups or property." In this case, stratification requires calculating the ratio for commercial property without the mall sale, and then adding the cash value of the mall back into the class. Here, the mall's SEV is subtracted from the total SEV for commercial property, and the average adjusted ratio applied to that number. The projected true cash value for the next year's starting base is then calculated by adding back the true cash value of the mall.

[2] We note that the owner of the mall appealed the assessment to the Tax Tribunal before the sale. A stipulation was subsequently entered whereby the assessor lowered the assessment to $7,217,772 to reflect the anticipated sale price of the mall.

The Commission notes that stratification is neither endorsed nor advocated in the *Assessor's Manual*. It argues, however, that stratification is a recognized statistical technique and should be allowed in certain circumstances. Macomb County has failed to cite any legal authority barring the use of stratification. Because the Commission did not simply exclude an "atypical" property from its study, but applied a statistical method, we conclude that the Commission's findings are based on competent, material and substantial evidence. *Tuinier, supra* at 666.

The County next asserts that the Commission adopted improper principles in rejecting the County's appraisal study and in the manner it conducted its own sale-ratio analysis. We disagree.

The law requires that appraisal studies comply with the requirements set forth in the *Assessor's Manual*. *Jackson Co, supra* at 294-295. In the instant case, Macomb County acknowledges that the land values used in its appraisal study were not current. Indeed, the County notes that it was in the process of compiling new values to use in the following year's study. Macomb County further admits that it did not include ECFs in its study. The *Assessor's Manual* stipulates that the figures utilized in appraisal studies be current. In *Jackson Co, supra*, this Court concluded that an appraisal study could be "rejected out of hand by the [Commission]" if it was not prepared in accordance with the *Assessor's Manual*. Because the County's appraisal study failed to comply with the *Assessor's Manual*, the Commission properly rejected its study.

We further note that the October 19, 1998 memorandum that the County relies upon to claim that the Commission violated its own procedures does not apply in this situation. A review of the memorandum shows that it applies to sales and appraisals that are *combined* to prepare a study in a single class. In this case, the Commission rejected an appraisal study performed by the County that failed to comply with the *Assessor's Manual*. Thereafter, the Commission commenced its own sales-ratio study to determine a more accurate SEV. There is no evidence that the two studies were combined. Thus, we find no merit to the County's claim that the Commission violated its own procedures by failing to follow the dictates of the memorandum.

Moreover, the fact that the Commission revised its study does not indicate that it was "tinkering" with the numbers in order to support any alleged preconceived notion that the commercial property in Macomb County was under-assessed. Rather, such revisions were necessary to ensure that the properties included in the sales-ratio study were market-based, arms length transactions.[3]

Macomb County ultimately asserts that the Commission violated its right to due process by failing to provide adequate notice of meetings. The County also contends that the Commission's ex parte communications with property owners violated its right to due process. We disagree.

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[3] MCL 211.27 provides that "'true cash value' means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale . . . ." Therefore, sales that were not "market-based" had to be removed from the study.

Due process requires notice of proceedings and an opportunity to be heard. *Mudge v Macomb Co*, 458 Mich 87, 101; 580 NW2d 845 (1998). The record in this case indicates that the County was notified of all proceedings and the status of the Commission's ongoing study. We note that the County was present at the equalization meetings conducted by the Commission. Accordingly, Macomb County has failed to prove that it was denied due process.

Affirmed.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ William B. Murphy